

**Department of Legislative Services**  
Maryland General Assembly  
2017 Session

**FISCAL AND POLICY NOTE**  
**Enrolled - Revised**

House Bill 174

Ways and Means

(Delegate Luedtke, *et al.*)

Education, Health, and Environmental Affairs

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**Education - Children With Disabilities - Individualized Education Program**  
**Process - Parental Consent**

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This bill requires the individualized education program (IEP) team to obtain written consent from a parent if the team proposes to (1) enroll the child in an alternative education program that does not issue or provide credits toward a high school diploma; (2) identify the child for the alternate assessment aligned with the State's alternate curriculum; or (3) include restraint or seclusion in the IEP to address the child's behavior.

If the parent does not provide written consent, the IEP team must send the parent written notice within five business days of the IEP meeting that (1) the parent has the right to either consent, or refuse to consent, to an action described above, and (2) if the parent does not provide written consent or refusal to consent within 15 business days of the IEP team meeting, the IEP team may implement the proposed action. If a parent refuses to consent to the proposed action, the IEP team may use the dispute resolution process to resolve the matter.

The bill takes effect July 1, 2017.

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**Fiscal Summary**

**State Effect:** General fund expenditures may increase beginning in FY 2018 by a minimal amount in the Maryland Office of Administrative Hearings (OAH) due to an increase in due process hearings. The Maryland State Department of Education (MSDE) can absorb any increase in administrative work related to additional due process hearings with existing resources. Revenues are not affected.

**Local Effect:** Local school system expenditures may increase beginning in FY 2018 due to an increase in due process hearings.

**Small Business Effect:** None.

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## **Analysis**

### **Current Law:**

#### *Individualized Education Program*

The federal Individuals with Disabilities Education Act (IDEA) requires that a child with disabilities be provided a free appropriate public education in the least restrictive environment from birth through the end of the school year in which the student turns 21 years old, in accordance with an IEP specific to the individual needs of the student. Local school systems are required to make a free appropriate public education available to students with an IEP. However, the State, under its supervisory authority required by IDEA, has the ultimate responsibility for ensuring that this obligation is met.

An IEP is a written statement for each child with a disability that, among other things, must indicate the present levels of academic achievement and functional performance of a child, measurable academic and functional goals for the child, how the child's progress toward meeting these goals will be measured, and the special education and related services that are to be provided for the child. The parent of a child with a disability is a member of the IEP team that is responsible for developing and reviewing a child's IEP and for revisions to the IEP.

At the initial evaluation meeting, the parents of a child with a disability must be provided, in plain language, a verbal and written explanation of the parents' rights and responsibilities in the IEP process and a program procedural safeguards notice. The parents may request this information at any subsequent meeting.

#### *Dispute Resolution*

Chapter 233 of 2006 established a Maryland process for resolution sessions that can be used to settle disputes about the identification, evaluation, and educational placements of children with disabilities, consistent with IDEA provisions for dispute resolution. Before conducting a due process hearing, the parent must have an opportunity to resolve a due process complaint at a resolution session.

A parent of a child with a disability or a public agency may request mediation to resolve any disagreement regarding the child's special education services or program, including mediation to resolve a due process complaint filed by a parent against a public agency. A parent of a child with disabilities may file a due process complaint with OAH and the

public agency. Similarly, the public agency may file a due process complaint with OAH and the parent. OAH appoints an administrative law judge to conduct a due process hearing. The decision of the administrative law judge must be made on substantive grounds based on whether a child has received a free appropriate public education.

**Background:** The U.S. Department of Education, Office of Special Education Programs (OSEP) has stated that the IEP team should work toward consensus, but the public agency has ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive a free appropriate public education. OSEP indicates that (1) it is not appropriate to make IEP team decisions based upon a majority vote and (2) that if the IEP team cannot reach consensus, the public agency must provide the parents with prior written notice of the agency's proposals or refusals, or both, regarding the child's educational program, and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing.

**State Fiscal Effect:** MSDE advises that it can absorb with current resources the increases in its administrative responsibilities resulting from an increase in the number of due process hearings at the local level. OAH costs per due process case have averaged approximately \$3,500 for the hearings covered by the bill. If the number of hearings annually increase by 10, costs increase by approximately \$35,000.

**Local Fiscal Effect:** Local school system expenditures likely increase due to additional due process hearings. The increase is anticipated to be minimal statewide, but the impact on individual school systems may vary.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore, Charles, and Montgomery counties; Maryland State Department of Education; Department of Legislative Services

**Fiscal Note History:** First Reader - February 8, 2017  
kb/rhh  
Third Reader - April 3, 2017  
Revised - Amendment(s) - April 3, 2017  
Enrolled - May 16, 2017  
Revised - Amendment(s) - May 16, 2017

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